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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,501	07/11/2003	Jeffory Neil Clifford	14917.1	5383

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EXAMINER
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COTTINGHAM, JOHN R

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 08/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/618,501

Applicant(s)

CLIFFORD ET AL.

Examiner

John R. Cottingham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/11/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of Claims 1-18 in the reply filed on 7/19/04 is acknowledged.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-2, and 6-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Kamarad et al. U.S. Patent 6,695,293. Kamarad et al. shows all of the claimed subject matter of an adjustable fence in the figures 1-3.

Regarding claim 1, an adjustable fence rail supporting and positioning assembly, said assembly comprising: a slotted member 22, said slotted member containing a plurality of uniformly-sized and uniformly-shaped slots 16 spaced at regular intervals along a length of said slotted member and disposed through said slotted member; a bracket member 18, said bracket member 18 including: a handle portion (top bent portion); a first slot-engaging portion detachably insertable into a first slot among said plurality of slots; a second slot-engaging portion detachably insertable into a second slot

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among said plurality of slots, said second slot-engaging portion being spaced at a predetermined distance from said first slot-engaging portion such that said second slot-engaging portion may be detachably inserted into said second slot while said first slot-engaging portion occupies said first slot; and a fence rail 20 contacting portion (mid portion) having a fence rail contacting surface thereon; and wherein said bracket member detachably connects to said slotted member and clasps, supports and positions a fence rail against said slotted member, without puncturing, damaging or defacing said fence rail, at a user-selected, user-modifiable elevation and at a user-selected, user-modifiable angle.

Regarding claim 2, wherein said slotted member 22 is a fence post formed of extruded metal and said bracket member is formed of extruded metal. (The extruded limitation is a process, making this a product by process claim and the process does not give patentable weight to the claim).

Regarding claim 6, wherein said slotted member is aluminum. (see cross hatching)

Regarding claim 7, wherein said plurality of uniformly-sized and uniformly-shaped slots 16 are spaced at a determined interval along said length of said slotted member, said determined interval sized to space and configure said fence rail clasped, supported and positioned against said slotted member by said bracket member at a determined, optimum distance from an additional fence rail clasped, supported and positioned against said slotted member by a second bracket member.

Regarding claim 8, wherein said determined interval is sized to configure a fence having porosity of not less than 30 percent but no more than 50 percent.

Regarding claim 9, wherein said determined interval is sized to configure a fence having porosity of not less than 45 percent but no more than 50 percent.

Regarding claim 10, wherein said determined interval is sized to configure a fence having porosity of 35 percent and to alternatively configure an alternative fence having a porosity of 50 percent.

Regarding claim 11, an adjustable fence rail supporting and positioning assembly, said assembly comprising: slotted member 22, said slotted member 22 containing a plurality of uniformly-sized and uniformly-shaped slots 16 spaced at regular intervals along a length of said slotted member 22 and disposed through said slotted member 22; a bracket member 18, said bracket member including: a handle portion (top bent portion); a first slot-engaging portion (portion contacting the slot) detachably insertable into a first slot among said plurality of slots; a second slot-engaging portion (portion contacting the slot) detachably insertable into a second slot among said plurality of slots, said second slot-engaging portion being spaced at a predetermined distance from said first slot-engaging portion such that said second slot-engaging portion may be detachably inserted into said second slot while said first slot-engaging portion occupies said first slot; a fence rail contacting portion (mid portion) having a fence rail contacting surface thereon; and at least an ancillary fence rail support and engagement member; and wherein said bracket member detachably

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connects to said slotted member and clasps, supports and positions a fence rail against said slotted member, without puncturing, damaging or defacing said fence rail, at a user-selected, user-modifiable elevation and at a user-selected, user-modifiable angle.

Regarding claim 12, wherein said slotted member 22 is a fence post formed of extruded metal and said bracket member is formed of extruded metal. (The extruded limitation is a process, making this a product by process claim and the process does not give patentable weight to the claim).

Regarding claim 13, the slotted member is aluminum. (see cross hatching)

Regarding claim 15, wherein said plurality of uniformly-sized and uniformly-shaped slots 16 are spaced at a determined interval along said length of said slotted member, said determined interval sized to space and configure said fence rail clasped, supported and positioned against said slotted member by said bracket member at a determined, optimum distance from an additional fence rail clasped, supported and positioned against said slotted member by a second bracket member.

Regarding claim 16, wherein said determined interval is sized to configure a fence having porosity of not less than 30 percent but no more than 50 percent.

Regarding claim 17, wherein said determined interval is sized to configure a fence having porosity of not less than 45 percent but no more than 50 percent.

Regarding claim 18, wherein said determined interval is sized to configure a fence having porosity of 35 percent and to alternatively configure an alternative fence having a porosity of 50 percent.

***Allowable Subject Matter***

3. Claims 3-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

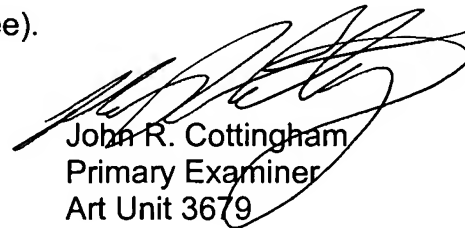
4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Berry et al. U.S. Patent 3,920,221 and Marsh U.S. Patent 3,881,698 show similar inventions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John R. Cottingham whose telephone number is (703) 306-3439. The examiner can normally be reached on Monday - Thursday, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703) 308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John R. Cottingham  
Primary Examiner  
Art Unit 3679

jrc